

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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EBATES PERFORMANCE MARKETING,
INC. dba RAKUTEN REWARDS.,

Plaintiff,

-against-

HCL AMERICA, INC.,

Defendant.

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JENNIFER E. WILLIS, United States Magistrate Judge:

The Court having considered the papers filed in support of and in opposition to Plaintiff's Motion (Dkt. Nos. 4 and 12) to compel and Defendant's Cross-Motion (Dkt. No. 22) to transfer or alternatively quash Plaintiff's Motion to compel, hereby grants Defendant's Cross-Motion to transfer. Plaintiff's Motion to compel and Defendant's instant motion to quash the underlying subpoena are hereby transferred to the United States Court for the District of Delaware and specifically to the pending action in that court captioned International Business Machines Corp. v. Rakuten Inc., et al., Civil Action No. 21-00461.

The subpoena in question was issued to Defendant by the United States Court for the District of Delaware in August 2022. Dkt. No. 7, Exhibit 4. The subpoena was issued in connection with a case currently before the District of Delaware. Dkt. No. 6 at ¶4. Under Federal Rule of Civil Procedure 45(f), this Court may transfer motions regarding a subpoena to the issuing court "if the person subject to the subpoena consents..." Fed. R. Civ. P. 45(f). Here, the Defendant has consented to transfer. Dkt.

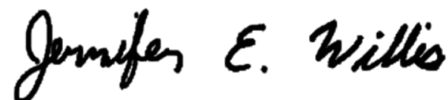
No. 23 at ¶6. The Court believes Defendant's consent, coupled with the issuing court's ongoing oversight of the underlying case, warrant transfer.

Plaintiff alleges the Motion to transfer is an "attempt to delay" compliance with Plaintiff's subpoena served over eight months ago. Dkt. No. 28 at ¶5. The Court notes that for much of the time that has lapsed, the parties attempted to independently discuss and resolve issues related to the scope of the subpoena. Dkt. No. 6 at ¶¶7-10. Plaintiff only sought intervention by the Court and filed the Motion to compel in March 2023. Dkt. No. 6 at ¶10. Therefore, the Court does not believe there has been undue delay.

For the foregoing reasons, Defendant's Cross-Motion to transfer is GRANTED and the hearing scheduled for May 8, 2023, at 1:30 p.m. is cancelled. The Clerk of Court is requested to close the motions at Dkt. Nos. 4, 12, and 22.

SO ORDERED.

DATED: New York, New York
May 5, 2023

A handwritten signature in black ink that reads "Jennifer E. Willis". The signature is written in a cursive, flowing style.

JENNIFER E. WILLIS
United States Magistrate Judge